

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SUSAN TOMAS,)	
)	
Plaintiff,)	
)	Case No. 08 CV 610
-vs-)	
)	Judge Bucklo
AMERICAN FEDERATION OF STATE,)	Magistrate Judge Denlow
COUNTY AND MUNICIPAL EMPLOYEES)	
(AFSCME) LOCAL 1006; PATRICIA OUSLEY;)	
RUDELEY HERRON; AND MARK FISHER,)	
)	
Defendants.)	

MOTION TO DISMISS

Now come the Defendants, American Federation of State, County and Municipal Employees (AFSCME), Local 1006, Patricia Ousley, Rudeley Herron and Mark Fisher, by their attorney, and, pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6), move to dismiss the Complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. In support of said Motion, Defendants state as follows:

1. Plaintiff filed her Complaint *pro se*, on January 28, 2008, under Title VII of the Civil Right Act of 1964; 42 U.S.C. Section 1981; and 42 U.S.C. Section 1983. This action is brought against a labor union and three individuals, the union president, vice president and chief steward. Plaintiff alleges that Defendants discriminated against her since 2001.

2. Plaintiff's EEOC charge and right to sue letter name only the union, and not the individual union officers, as respondents. Moreover, there is no individual liability under Title VII.

3. The Title VII claims should therefore be dismissed as to Defendants Ousley, Herron and Fisher.

4. Plaintiff in the EEOC charge alleged discrimination on the basis of national origin and retaliation.

5. Plaintiff in the Complaint alleges discrimination on the basis of national origin, race and retaliation.

6. Plaintiff's Title VII claim of race discrimination should be dismissed as outside the scope of the EEOC charge.

7. Plaintiff alleges in the Complaint that Defendants have discriminated against her since 2001. The EEOC charge alleges that the discrimination began in May 2005.

8. Plaintiff's Title VII claims of discrimination preceding May 2005 should be dismissed as outside the scope of her EEOC charge.

9. Plaintiff's Title VII claims of discrimination preceding 300 days prior to the filing of her EEOC charge, or prior to February 7, 2006, should be dismissed for lack of subject matter jurisdiction.

10. The statute of limitations applicable to civil rights claims under Section 1981 and Section 1983 is two years.

11. Plaintiff's Section 1981 and 1983 claims of discrimination preceding two years prior to the filing of her Complaint should therefore be dismissed.

12. All of Plaintiff's claims against the individual union Defendants should be dismissed as individual damage claims may not be brought against union officials for acts that are undertaken on behalf of the union.

13. In order to establish a Title VII or Section 1981 claim of discrimination against a union, a plaintiff must establish all of the following: (1) plaintiff's employer violated the collective bargaining agreement with respect to her; (2) the union let such breach of contract go unrepaired, thereby breaching its own duty of fair representation; and (3) that some evidence indicates discriminatory animus motivated the union.

14. The Title VII and Section 1981 claims should be dismissed for failure to state a claim upon which relief can be granted.

15. In order to state a claim under Section 1983 against private parties, a plaintiff must allege facts which show that the private parties were acting under color of state law.

16. The Section 1983 claim should be dismissed for failure to state a claim upon which relief can be granted.

Wherefore, Defendants pray that the Complaint be dismissed.

Respectfully submitted,

CORNFIELD AND FELDMAN

BY: s/ Melissa J. Auerbach

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April 3, 2008

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2008 caused the foregoing **MOTION TO DISMISS** to be electronically filed with the Clerk of the Court using the CM/ECF system and I caused a true and accurate copy of same to be served on the following, via First Class Mail:

Ms. Susan Tomas
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BY: s/ Melissa J. Auerbach
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